



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT  
69 HAGOOD AVENUE  
CHARLESTON, SOUTH CAROLINA 29403

CESAC-RD

2 MAY 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime  
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322  
(2023),<sup>1</sup> SAC-2024-00534

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

---

<sup>1</sup> While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

[CESAC-RD]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2024-00534]

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name of Aquatic Resource	Acres/ Linear Feet	Waters of the US (WOUS)	Section 404/ Section 10
Jurisdictional Wetland 1	6.45 acres	Yes	Section 404
Non-Jurisdictional Feature Borrow Pit	1.05 acres	No	N/A

## 2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

## 3. REVIEW AREA.

- Project Area Size: 41.14 acres
- Coordinates of the review area: Latitude: 34.591°, Longitude - 79.645°
- c. Nearest City: Conway
- d. County: Horry County
- e. State: South Carolina

Portions of the project boundary are open agricultural fields.

## 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

[CESAC-RD]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2024-00534]

- Jordan Lake. The named TNW is subject to ebb and flow of the tide.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS
- Jurisdictional Wetland 1 directly abuts the offsite tributary Brown Swamp. Brown Swamp flows into Jordan Lake, a named TNW subject to ebb and flow of the tide.
  -
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> [N/A]
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
- a. TNWs (a)(1): [N/A.]
  - b. Interstate Waters (a)(2): [N/A.]
  - c. Other Waters (a)(3): [N/A]

---

<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

[CESAC-RD]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2024-00534]

- d. Impoundments (a)(4): [N/A.]
- e. Tributaries (a)(5): [N/A.]
- f. The territorial seas (a)(6): [N/A.]
- g. Adjacent wetlands (a)(7): The wetland onsite was determined to have a continuous surface connection to the offsite TNW, Jordan Lake via Brown Swamp, a named tributary.

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>7</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.
  - The review area contains 1.05-acre upland excavated borrow pit. Material for the borrow was excavated in the late 1940s as visible in historic ariel imagery dated 1948-49. A review of soil maps, historical aerial photographs, lidar, and national wetland inventory maps indicated the borrow was excavated out of uplands. As stated in the Preamble to the November 13, 1986, Regulations found on page 41217 (Federal Register vol. 51 No. 219) “waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and resulting body of water meets the definition of waters of the United States” are generally not considered waters of the U.S.
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.
  - The review area contains one upland excavated ditch. This feature is identified as ‘Non-jurisdictional Ditch’ on the project depiction. This feature was determined to have been excavated wholly in and draining only uplands and does not carry a relative permanent flow of water.

---

<sup>7</sup> 51 FR 41217, November 13, 1986.

[CESAC-RD]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2024-00534]

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. [N/A.]
  - d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. [N/A]
  - e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. [N/A.]
  - f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). [N/A]
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
- a. Office Determination: April 23, 2025
  - b. Aquatic Resources delineation submitted by, or on behalf of, the requestor: Wetland delineation package including data sheets and map of provided by the Brigman Company in the submittal dated May 6, 2024.
  - c. U.S. Geological Survey map(s): 7.5 Minute Index/ 1:240000/ Horry Quad; USGS topographic survey information depicts a partially cleared forested area void of wetland symbology. A solid blue line (Brown Swamp) is located offsite west of the project boundary.

[CESAC-RD]

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SAC-2024-00534]

- d. USDA Natural Resources Conservation Service Soil Survey: NRCS / Soil Survey Geographic Database (SSURGO); Soil Survey information depicts the project boundary as the non-hydric soil Kenansville fine sand, partially hydric soils Lynchburg and Goldsboro loamy fine sand, and the hydric soil Meggett loam.
- e. National wetlands inventory map(s): USFWS NWI Map Service; NWIs map the project boundary as uplands with forested wetlands along the western project boundary (PFO1B).
- f. Photographs: SCDNR 2023 Aerial Imagery, USC University Libraries Historical Aerial imagery 1930s-1980s, and Site photos submitted by the agent.

10. OTHER SUPPORTING INFORMATION.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.





Wetland Delineation/Determination

Kingston Point Marina Property

Horry County, South Carolina  
PIN#: 291-00-00-0008, 291-10-03-0008 Thru 0017

Area Summary:	
Jurisdictional Wetland	6.45
Non-Jurisdictional Wetland	0.00
Critical Area/Section 10	0.00
Uplands	34.69
Total	41.14

- Notes**
1. Potential wetland/non-wetland areas depicted here on have not been verified by the US Army Corps of Engineers. Areas depicted as wetlands were identified using a combination of available remote sensing and onsite investigation. Prior to any land disturbing activities, or land transactions a final jurisdictional determination should be obtained from the US Army Corps of Engineers.
2. Boundary information taken from Horry County GIS/Tax Parcel information.
3. Onsite inspection was conducted on 5-2-24.

**Legend**

**Line Legend**

Boundary  
Adjacent Boundary  
Right of Way  
Jurisdictional Tributary  
Non-Jurisdictional Ditch  
Dirt Road  
Bulkhead

**Hatch Legend**

Jurisdictional Wetland  
Non-Jurisdictional Wetland  
Critical Area/Section 10

**Symbol Legend**

Data Point  
Photo Point  
Property Corner

Prepared For  
Job #  
Date

Beverly Homes  
00009-24111  
4-17-24

